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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE, INC.

Defendant.

Case No. CV 10-03561 WHA

**SECOND DECLARATION OF FRED  
NORTON IN RESPONSE TO  
DECLARATIONS SUBMITTED ON  
BEHALF OF GOOGLE**

Dept.: Courtroom 4, 3<sup>rd</sup> Floor  
Judge: Honorable Donna M. Ryu

1 I, FRED NORTON, declare as follows:

2 1. I am a partner with the law firm of Boies, Schiller & Flexner LLP, attorneys for plaintiff  
3 Oracle America, Inc. in the above captioned matter, and admitted to practice before this Court.

4 2. I make this declaration based on my own personal knowledge. If called as a witness, I  
5 could and would testify competently as to the matters set forth herein.

6 **Google Privilege Log Entries For Documents Authored By Mr. Lindholm**

7 3. I have read Mr. Lindholm's August 15, 2011, declaration and his August 17, 2011,  
8 corrected declaration. I understand that Mr. Lindholm states, on information and belief, the "auto-save"  
9 feature of Google's email system saved unfinished drafts of an email that he eventually sent on August  
10 6, 2010, and that these "auto-saved" drafts are the documents at issue on Oracle's motion to compel. I  
11 further understand that Mr. Lindholm states, in paragraph 12, that in drafting that email "adding the  
12 addresses of Mr. Lee and Mr. Rubin was one of the last things I did" and that the "auto-saved" emails  
13 "do not show the words 'Attorney Work Product' or 'Google Confidential' because adding those words  
14 is one of the last things I did."

15 4. Google produced its Fifth Supplemental Privilege Log to Oracle on August 15, 2011, as an  
16 Excel spreadsheet. Members of my office staff, acting at my direction, used the Excel autofilter feature  
17 to isolate the log entries that identify Mr. Lindholm as the author. A true and correct copy of excerpts  
18 of the Google Fifth Supplemental Privilege Log that identify Mr. Lindholm as the author is attached as  
19 Exhibit 1. The log contains 856 separate entries listing Lindholm as the author, either as  
20 Lindholm\_Tim, Tim Lindholm, or Tim Lindholm (lindholm@google.com).

21 5. As indicated on Exhibit 1, many entries authored by Mr. Lindholm have sequential  
22 document identification numbers, identical dates, identical recipients, identical copyees, and identical  
23 descriptions. These appear to be additional examples of "auto-saved" drafts.

24 6. Of the 856 entries identifying Mr. Lindholm as the author, in every example that appears to  
25 be an "auto-saved" draft, every single successive version of the document has the exact same content in  
26 the "To:" fields and the "cc:" fields, except for the three Lindholm Withheld Emails. That is, according  
27 to Google's privilege log, the only time that Mr. Lindholm ever drafted a privileged email and waited  
28

1 until he was finished to add a lawyer's name and "Attorney Work Product" or "Google Confidential"  
 2 was when he drafted his August 6, 2010 email. The only apparently intended addressee in the  
 3 salutation of that email (at least in the Lindholm Document that was quoted by Judge Alsup in open  
 4 court on July 21) was Andy Rubin.

5 **Publication of Lindholm Document in Press and by Google**

6 7. Attached as Exhibit 2 hereto is a true and correct copy of a printout from  
 7 <http://googleblog.blogspot.com/2006/01/google-in-china.html>, which purports to be an entry dated  
 8 January 27, 2006 on the Official Google Blog. That document states that in January 2006, Google  
 9 launched a website for the Peoples' Republic of China, and that in order to do so, Google "agreed to  
 10 remove certain sensitive information from our search results." The document further states that  
 11 "Chinese regulations will require us to remove some sensitive information from our search results.  
 12 When we do so, we'll disclose this to users, just as we already do in those rare instances where we alter  
 13 results in order to comply with local laws in France, Germany and the U.S."

14 8. Attached as Exhibit 3 is a true and correct copy of a printout from  
 15 <http://www.google.com/transparencyreport/faq/>, which purports to be a page from the google.com  
 16 domain describing Google's policies for removing content from its services, including web search. On  
 17 that web page Google states, among other things, the following:

18 Do you ever remove content that violates local law without a court order or  
 19 government request?

20 Yes. The statistics we report here do not include content removals that we  
 21 regularly process every day across our products for violation of our content  
 22 policies (for example, we do not permit hate speech in Blogger and other similar  
 23 products) in response to user complaints. In many cases these requests result in  
 the removal of material that violates local law, independent of any government  
 request or court order seeking such removal.

24 9. In my declaration dated August 15, 2010, I stated that Google itself continues to make the  
 25 contents of the Lindholm Document widely available, and cited examples of Google searches, limited  
 26 to the last month, that resulted in hundreds or thousands of references to the Lindholm Document, with  
 27

1 quotations of the allegedly privileged content appearing on the Google search page itself. I have since  
2 conducted those same searches, and as of the date of this declaration those facts are unchanged.

3 **Google's Characterization of the Purpose of the Lindholm Documents**

4 10. I have read Mr. Lee's August 15, 2011, declaration and his August 17, 2011, corrected  
5 declaration. I understand Mr. Lee states, in paragraphs 7 and 8 of his declaration, that Mr. Lindholm  
6 attended a meeting on July 30, 2010, the purpose of which was "to formulate a response to Oracle's  
7 infringement claims," and further states that Mr. Lindholm performed work after July 30 "on issues  
8 related to Oracle's infringement claims."

9 11. Mr. Lindholm's declaration states, at paragraph 7, that he was asked at the July 30 meeting  
10 to "gather information for Google's lawyers and management to consider in evaluating technology  
11 issues related to Oracle's infringement claims."

12 12. The Lindholm Document (GOOGLE-12-00039565) makes no reference to any  
13 infringement claims by Oracle.

14 13. At the discovery hearing on July 21, 2011, Google counsel Bruce Baber stated that "it's my  
15 understanding that the alternatives to Java that Mr. Lindholm was talking about were alternatives to the  
16 language, i.e. could we use a different programming language." (First Norton Decl. Ex. H at 34:19-23.)  
17 Similarly, at the *Daubert* hearing on July 21, 2011, Google counsel Robert Van Nest stated that "The  
18 alternatives we're talking about here [in the document] might be simply alternative languages" (First  
19 Norton Decl. Ex. I at 42:11-13) – not the infringement claims that Oracle asserted.

20 14. Oracle did not assert, before, on, or after July 20, 2010, that use of the Java programming  
21 language by Google would be infringement. Oracle has never asserted infringement claims against  
22 Google based on the use of the Java *language*.

23 15. As Oracle counsel Mr. Jacobs stated at the July 21, 2011 discovery hearing, the Lindholm  
24 Document "is very much an e-mail about negotiations, about negotiation strategy, and whether in the  
25 context of a negotiation about Android and Java intellectual property, it would be possible for Google  
26 to tell Oracle we've got viable alternatives, and this is why the price should go down. Literally it says  
27 that in the message." (First Norton Decl. Ex. H at 34:25-35:7.)

